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Paper No. 14

THE H.T. THAN LAW GROUP  
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In re Application of :  
Thuy Diem Pham :  
Application No. 09/866,261 :  
Filed: May 25, 2001 :  
Title of Invention: :  
VIRAL DETECTION SYSTEM :

**COPY MAILED**

**APR 21 2004**

**OFFICE OF PETITIONS**

This is a decision on the Request for Reconsideration of Holding of Abandonment, filed on December 15, 2003, requesting withdrawal of the holding of abandonment.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly respond to the Notice to File Corrected Application Papers (hereinafter "Notice"), mailed August 2, 2002. The Notice set a two (2) month period for reply, and required a substitute specification in compliance with 37 CFR 1.52. Extensions of time were available under 37 CFR 1.136(a).

On September 9, 2003, the Office received a coversheet entitled "Response to Notice to File Corrected Application Papers" (hereinafter "Coversheet"). The Coversheet stated that the substitute specification was attached; however, no new substitute specification was located among the application papers. The Coversheet included a Certificate of Mailing; however, the Certificate of Mailing certifies that "this paper is being deposited . . . on February 25, 2002." The Coversheet and Certificate of Mailing are signed and dated September 6, 2002.

Because no substitute specification in response to the Notice was received, the application became abandoned for failure to timely and properly reply to the Notice.

Applicant files the instant petition requesting withdrawal of the holding of abandonment. In support of this request, Applicant argues that corrected application papers were timely filed on September 6, 2002, and included a return-receipt postcard. Applicant further states that status inquiries were filed on January 23, 2003 and May 21, 2003 respectively. In response to the second status inquiry, Applicant received correspondence from Technology Center Art Unit 1700 notifying Applicant of the projection that the application will be examined three (3) to six (6) months from the mail date of the correspondence.

#### Applicable Law

There are three provisions wherein this Office will consider correspondence as being timely filed. The first method provides that

"correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to the expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

37 CFR 1.8.

The second method, inapposite here, is under 37 CFR 1.10, and provides for the filing of papers and fees by "Express Mail."

Finally, section 503 MPEP provides that

[i]f a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all items listed thereon on the date stamped thereon by the USPTO.

## Analysis

### The Certificate of Mailing

A review of the Certificate of Mailing reveals a discrepancy between the date that Applicant certified as the mail date, and the date the correspondence was signed. The Certificate of Mailing certifies that "this paper is being deposited . . . on February 25, 2002. The date Applicant seeks to rely upon is September 9, 2002. As such, the procedure described in this section was not followed, and the Certificate of Mailing is improper and can not be relied upon to establish that the substitute specification was timely filed.

### The Return-receipt Postcard

A review of Applicant's return-receipt postcard reveals that the Office received, on September 9, 2002, a Request for Refund and a Response to Notice to File Corrected Application Papers.

It is initially noted that the Coversheet, filed on September 9, 2003 and located in the application file, is entitled Response to Notice to File Corrected Application Papers. Secondly, the postcard does not list a substitute specification. Thus, while applicant's postcard receipt evinces receipt of a Response to Notice to File Corrected Application Papers and a Request for Refund (also located among the applications papers in the file), the return-receipt postcard fails to demonstrate that a substitute specification was present upon the filing of the Coversheet.

The MPEP provides that

The postcard receipt will not serve as prima facie evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard 'a complete application' or 'patent application' will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee[] or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portions of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard.

MPEP § 503

#### Conclusion

Applicant may not rely on his Certificate of Mailing or his return-receipt postcard as evidence of timely filing of the substitute specification. Accordingly, the petition is dismissed.

Applicant is advised to file a petition under 37 CFR 1.137(b) stating that the delay was unintentional. The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was

unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).


Further correspondence with respect to this matter should be addressed as follows:

By mail:           Commissioner for Patents  
                    PO Box 1450  
                    Alexandria, VA 22313-1450

By FAX:           (703) 872-9306  
                    Attn: Office of Petitions

By hand:           2201 South Clark Place  
                    Customer Window  
                    Crystal Plaza Two, Lobby Room 1B03  
                    Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.

  
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Office of Petitions